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TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.
NRT.0121US

In Re Application Of: Mo-Han Fong et al.

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/799,963	03-12-2004	Amancio Gonzalez	21906	2617	9041

Invention: Communicating a Broadcast Message to Change Data Rates of Mobile Stations

COMMISSIONER FOR PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:
November 13, 2007.

The fee for filing this Appeal Brief is: \$510.00

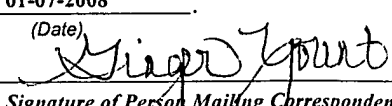
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Dated: January 7, 2008

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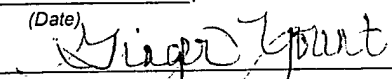
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Ginger Yount

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Mo-Han Fong et al.	§	Art Unit:	2617
		§		
Serial No.:	10/799,963	§		
		§	Examiner:	Amancio Gonzalez
Filed:	March 12, 2004	§		
		§		
For:	Communicating a Broadcast	§	Atty. Dkt. No.:	NRT.0121US
	Message to Change Data Rates	§		(16634RRUS02U)
	of Mobile Stations	§		

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P.O. Box 1450

Alexandria, VA 22313-1450

APPEAL BRIEF PURSUANT TO 37 C.F.R § 41.37

Sir:

The final rejection of claims 1-25 is hereby appealed.

I. REAL PARTY IN INTEREST

The real party in interest is Nortel Networks Limited.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF THE CLAIMS

Claims 1-25 have been finally rejected and are the subject of this appeal.

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Ginger Yount

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IV. STATUS OF AMENDMENTS

A request for reconsideration after the final Office Action was filed on September 19, 2007. No claim amendments were made in the request for reconsideration.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The following provides a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings by reference characters, as required by 37 C.F.R. § 41.37(c)(1)(v). Each element of the claims is identified by a corresponding reference to the specification and drawings where applicable. Note that the citation to passages in the specification and drawings for each claim element does not imply that the limitations from the specification and drawings should be read into the corresponding claim element.

Independent claim 1 recites a method for use in a wireless communications network, comprising:

communicating data with plural mobile stations (Fig. 1:16) over a wireless link (Spec., ¶ [0017]); and

sending (Fig. 2:214) a broadcast message to the plural mobile stations, the broadcast message containing an indication for indicating to the plural mobile stations that the mobile stations are to change data rates for transmissions over a reverse wireless link (Spec., ¶ [0040]).

Independent claim 13 recites an article comprising at least one storage medium containing instructions that when executed cause a system in a wireless communications network to:

communicate data with plural mobile stations (Fig. 1:16) over a wireless link (Spec., ¶ [0017]); and

send (Fig. 2:214) a broadcast message to the plural mobile stations, the broadcast message containing an identifier (Spec., ¶ [0040]),

the identifier set to a first value to uniquely identify one of the plural mobile stations, and the identifier set to a predetermined value to provide a broadcast indication for indicating to the plural mobile stations that the mobile stations are to change data rates for transmissions over a reverse wireless link (Spec., ¶ [0034]).

Independent claim 20 recites a mobile station (Fig. 1:16) comprising:

an interface to receive messages from a base station (Fig. 1:19), the messages comprising a broadcast message targeted to plural mobile stations (Spec., ¶ [0034]); and

a controller (Fig. 1:42) to change a data rate of transmission over a reverse wireless link in response to the broadcast message (Spec., ¶ [0040]).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Claims 1-12 and 20-25 Rejected Under 35 U.S.C. § 103(a) as Unpatentable Over U.S. Patent No. 7,068,683 (Lundby) in View of U.S. Patent No. 7,155,236 (Chen).**
- B. Claims 13, 14, and 17-19 Rejected Under 35 U.S.C. § 103(a) as Unpatentable Over Lundby in view of U.S. Patent No. 6,252,898 (Eto).**
- C. Claims 15 and 16 Rejected under 35 U.S.C. § 103(a) as Unpatentable Over Lundby in view of Eto and Chen.**

VII. ARGUMENT

The claims do not stand or fall together. Instead, Appellant presents separate arguments for various independent and dependent claims. Each of these arguments is separately argued below and presented with separate headings and sub-headings as required by 37 C.F.R. § 41.37(c)(1)(vii).

A. Claims 1-12 and 20-25 Rejected Under 35 U.S.C. § 103(a) as Unpatentable Over U.S. Patent No. 7,068,683 (Lundby) in View of U.S. Patent No. 7,155,236 (Chen).

1. Claims 1-12.

Independent claim 1 was rejected as being obvious over Lundby and Chen. It is respectfully submitted that a *prima facie* case of obviousness has not been established with respect to claim 1 over Lundby and Chen for at least the following reasons: (1) no reason existed that would have prompted a person of ordinary skill in the art to combine the teachings of Lundby and Chen to achieve the claimed invention; and (2) the hypothetical combination of Lundby and Chen would have led to subject matter significantly different from the claimed subject matter.

To make a determination under 35 U.S.C. § 103, several basic factual inquiries must be performed, including determining the scope and content of the prior art, and ascertaining the differences between the prior art and the claims at issue. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q. 459 (1965). Moreover, as a recent U.S. Supreme Court held, it is important to identify a reason that would have prompted a person of ordinary skill in the art to combine reference teachings in the manner that the claimed invention does. *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741, 82 U.S.P.Q.2d 1385 (2007).

Claim 1 recites a method for use in a wireless communications network that includes communicating data with plural mobile stations over a wireless link, and sending a broadcast

message to the plural mobile stations, where the broadcast message contains an indication for indicating to the plural mobile stations that the mobile stations are to change data rates for transmissions over a reverse wireless link.

The Examiner cited column 8 of Lundby as disclosing the use of a broadcast message. 7/26/1007 Office Action at 4. Also, the Examiner referred to Fig. 11 in Lundby, and specifically steps 122-134 of Fig. 11, which describes a procedure in which a mobile station and base station negotiate for determining a data rate for traffic over the forward wireless link. As conceded by the Examiner, Lundby does not disclose the sending of a broadcast message to plural mobile stations, where the broadcast message contains an indication for indicating to the plural mobile stations that the mobile stations *are to change data rates for transmissions over a reverse wireless link*. *Id.* However, the Examiner cited Chen as disclosing the claimed subject matter missing from Lundby. *Id.*

There are several points of errors made in the obviousness rejection. The first point of error is that although column 8 of Lundby does refer to using a broadcast message, it is noted that the broadcast message does *not* contain an indication for indicating that mobile stations are to change data rates. It appears that the Examiner is asserting that the broadcast message sent in Lundby contains an indication that mobile stations are to change data rates on the forward link. That is clearly not the case, and is established by the Fig. 11 process flow of Lundby. In the Fig. 11 process flow, it is noted that the base station and each mobile station have to **individually** negotiate the data rates to be used for the forward link. Note that in column 10 of Lundby, reference is made to the base station transmitting a data rate indicator to each mobile station in step 134 of Fig. 11. This data rate indicator comes right after the sentence that states that the base station “determines **corresponding data rates** for **each** mobile user.” Lundby, 10:9-11

(emphasis added). Since there are plural data rates for the plural mobile stations, it is clear that the data rate indicator transmitted at step 134 of Fig. 11 **cannot** be transmitted in a **broadcast** message. Therefore, the assertion by the Examiner that the base station of Lundby sends a broadcast message to indicate to multiple mobile stations that data rates of the mobile stations are to be changed is **incorrect**.

The Response to Arguments section of the final Office Action further cited column 1, line 65-column 2, line 10, of Lundby, which refers to a first embodiment in which a base station transmits packet data to one mobile user at a time, and to a second, alternate embodiment in which packet data is transmitted to multiple mobile users at a time, with the available power divided among multiple users. Lundby, 1:65-2:6. Based on this passage of Lundby, the Examiner made the following conclusion: “hence indicating to the mobile stations a transmission rate change inherent in the transmission power to data transmission ratio.” 7/26/2007 Office Action 3. The Examiner’s conclusion is erroneous, as the cited passage in columns 1 and 2 of Lundby does not provide any hint of “sending a broadcast message to the plural mobile stations, the broadcast message containing an indication for indicating to the plural mobile stations that the mobile stations are to change data rates for transmissions over a reverse wireless link.” As established above, since there are plural data rates for the plural mobile stations in Lundby, it is clear that the data rate indicator transmitted at step 134 of Fig. 11 of Lundby cannot be transmitted in a broadcast message.

It is clear that Lundby does not disclose subject matter that was asserted by the Examiner as disclosing a feature of claim 1. In fact, Lundby teaches an approach that is contrary to the approach of sending a broadcast message containing an indication for indicating to the plural mobile stations that the mobile stations are to change data rates for transmissions over a reverse

wireless link. Based on this first point of error made by the Examiner, the obviousness rejection of claim 1 over Lundby and Chen is defective.

The second point of error made by the Examiner is that Chen does not disclose the claimed subject matter that is missing from Lundby. The Examiner asserted that Chen “discloses mobile station transmission on the reverse link,” citing specifically to column 2, lines 25-32, and column 2, line 67-column 3, line 6, of Chen. 7/26/2007 Office Action at 4. The cited passages of Chen refer to the mobile station needing varying amounts of transmission power for transmitting data on the reverse link, and providing efficient utilization of the reverse link capacity. However, nowhere in the cited passages of Chen, or anywhere else in Chen, is there any hint of sending a broadcast message to plural mobile stations, where the broadcast message contains an indication for indicating to the plural mobile stations that the mobile stations are to change data rates for transmission over a reverse wireless link. As conceded by the Examiner, this claimed subject matter is also not in Lundby. Therefore, it is clear that the hypothetical combination of Lundby and Chen does not teach or hint at all elements of claim 1, contrary to the assertion made by the Examiner.

In fact, the hypothetical combination of Lundby and Chen would have led to a process where a base station and each mobile station would have to **individually** negotiate data rates to be used for a reverse link. See Lundby, Fig. 11 process flow. This is contrary to the use of a broadcast message containing an indication for indicating to the plural mobile stations that the mobile stations are to change data rates for transmissions over a reverse wireless link, as recited in claim 1.

A third point of error made by the Examiner is the assertion by the Examiner that a person of ordinary skill in the art would have been prompted to combine the teachings of Lundby and Chen to achieve the claimed subject matter. Lundby describes negotiation between a base station and each mobile station in which the base station is able to determine data rates for respective mobile stations, and to **individually** transmit a data rate indicator to each of the mobile stations so that the mobile stations know what data rate traffic is to be received on the forward wireless link. There is no hint anywhere within Lundby, nor in Chen, of modifying this procedure to provide for a broadcast message that is sent to plural mobile stations to indicate to the plural mobile stations that they are to change data rates for transmission over a reverse wireless link.

Therefore, since no reason existed to combine the teachings of Lundby and Chen to achieve the claimed invention, it is respectfully submitted that the obviousness rejection of claim 1 is defective for this additional reason.

Finally, the Examiner in the 10/23/2007 Advisory Action made the assertion that “applicant’s arguments deviate absolutely from the subject matter as stated by the independent claims of the present application.” The Examiner did not provide an explanation regarding how Appellant’s arguments “deviate absolutely” from the claimed subject matter. In fact, the above arguments point specifically to the actual language of claim 1, without deviating at all from claim 1. It is the Examiner that has failed to point to competent teachings of the references that provide any teaching or hint of the claimed subject matter.

Therefore, claim 1 and its dependent claims are allowable over the cited references. Reversal of the final rejection of the above claims is respectfully requested.

2. Claims 20-25.

Independent claim 20 was also rejected as being obvious over Lundby and Chen. Claim 20 recites a mobile station that comprises an interface to receive messages from the base station, the messages comprising a broadcast message targeted to plural mobile stations. Moreover, the mobile station includes a controller to change a data rate of transmission over a reverse wireless link in response to the broadcast message. Neither Lundby nor Chen discloses or hints at a controller in the mobile station to change a data rate of transmission over a reverse wireless link **in response to the broadcast message**. As discussed above in connection with claim 1, although Lundby makes reference to a broadcast message, note that this broadcast message refers to a broadcast message of data targeted to a group of mobile stations. There is nothing to indicate that this broadcast message would be provided to cause a mobile station to change its data rate of transmission over a reverse wireless link.

Chen also fails to provide any indication of a mobile station that has a controller to change a data rate of transmission over a reverse wireless link in response to a broadcast message.

In view of the foregoing, it is clear that even if Lundby and Chen can be hypothetically combined, the hypothetical combination of references would lead to subject matter significantly different from the subject matter of claim 20. Moreover, as discussed above, no reason existed that would have prompted a person of ordinary skill in the art to combine the teachings of Lundby and Chen.

Therefore, reversal of the final rejection of the above claims is respectfully requested.

B. Claims 13, 14, and 17-19 Rejected Under 35 U.S.C. § 103(a) as Unpatentable Over Lundby in view of U.S. Patent No. 6,252,898 (Eto).

1. Claims 13, 14, 17-19.

Independent claim 13 was rejected as being obvious over Lundby in view of Eto. A *prima facie* case of obviousness has not been established with respect to claim 13 for at least the following reasons: (1) no reason existed that would have prompted a person of ordinary skill in the art to combine the teachings of Lundby and Eto; and (2) the hypothetical combination of Lundby and Eto does not disclose or hint at all elements of claim 13.

Claim 13 recites sending a broadcast message to the plural mobile stations, where the broadcast message contains an identifier, the identifier set to a first value to uniquely identify one of the plural mobile stations, and the identifier set to a predetermined value to provide a broadcast indication for indicating to the plural mobile stations that the mobile stations are to change data rates for transmissions over a reverse wireless link.

The Examiner stated that the “reverse wireless link” of claim 13 is “read on *mobile station transmitting to the base station* – see col. 9 lines 41-45, col. 10 lines 9-12, fig. 11 step 34” 7/26/2007 Office Action at 6. Lundby clearly does not disclose providing any type of indication for indicating to the plural mobile stations that the mobile stations are to change data rates for transmissions over a *reverse* wireless link. The data rate indicator that is transmitted to each mobile station at step 134 of Fig. 11 of Lundby refers to the data rate in the *forward* wireless link. Specifically, Lundby states that “[p]rocessing then continues to step 144 and the mobile receives traffic at the data rate” Lundby, 10:12-14. In view of this erroneous application of Lundby to the claim language, the obviousness rejection of claim 13 over Lundby and Eto is clearly defective.

Moreover, as discussed above in connection with claim 1, Lundby clearly does not disclose sending a *broadcast* message to plural mobile stations, where the broadcast message has an identifier set to a predetermined value to provide a broadcast indication for indicating to the plural mobile stations that the mobile stations are to change data rates for transmissions over a reverse wireless link. As noted above, Lundby discloses that multiple indicators are sent to multiple corresponding mobile stations to **individually** negotiate the data rates to be used for the forward link; therefore, there is clearly no hint given in Lundby of sending a broadcast message in the manner recited in claim 13. Based at least on this additional point of error made by the Examiner, the obviousness rejection is defective.

Moreover, Eto clearly does not disclose or hint at the claimed subject matter that is missing from Lundby. The Examiner cited the Abstract and column 2, lines 59-67, and column 3, lines 16-21, of Eto, where the cited passages of Eto refer to a first station receiving a parameter indicative of a C/N (carrier-to-noise) value of a received signal, and if the measured C/N value presents a change equal to or larger than a predetermined value, the data rate of a signal to be transmitted from another station is changed. However, there is absolutely no hint in Eto of sending a broadcast message that contains the identifier set to a predetermined value to provide a broadcast indication for indicating to the plural mobile stations that the mobile stations are to change data rates for transmissions over a reverse wireless link.

Therefore, even if Lundby and Eto can be properly combined, their hypothetical combination clearly does not disclose or hint at all elements of claim 13.

Moreover, no reason existed that would have prompted a person of ordinary skill in the art to combine the teachings of Lundby and Eto to achieve the claimed subject matter. As explained above, there clearly existed no hint of using a broadcast message that contains the

identifier set to the predetermined value of claim 13. The only apparent basis for combining Lundby and Eto to achieve the claimed invention is impermissible hindsight based on the teachings of the present invention. Without the benefit of the teachings of the present invention, a person of ordinary skill in the art looking to the teachings of Lundby and Eto would not have been prompted to modify Lundby and Eto to achieve the use of a broadcast message containing the identifier set to the predetermined value that is recited in claim 13.

In fact, Lundby specifically teaches an approach that is contrary to the approach of claim 13. Lundby teaches that a base station in each mobile station had to individually negotiate data rates to be used for communications. This is contrary to the broadcast approach used by claim 13. Thus, a person of ordinary skill in the art clearly would not have been led to the claimed invention based on the teachings of Lundby and Eto.

In view of the foregoing, it is respectfully submitted that a *prima facie* case of obviousness has not been established with respect to claim 13 and its dependent claims.

Therefore, reversal of the final rejection of the above claims is respectfully requested.

C. Claims 15 and 16 Rejected under 35 U.S.C. § 103(a) as Unpatentable Over Lundby in view of Eto and Chen.

1. Claims 15, 16.

In view of the defective obviousness rejection of base claim 13 over Lundby and Eto, it is respectfully submitted that the obviousness rejection of dependent claims 15 and 16 over Lundby, Eto, and Chen is also defective.


Therefore, reversal of the final rejection of the above claims is respectfully requested.

CONCLUSION

In view of the foregoing, reversal of all final rejections and allowance of all pending claims is respectfully requested.

Respectfully submitted,

Date: Jan 7, 2008



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VIII. APPENDIX OF APPEALED CLAIMS

The claims on appeal are:

1 1. A method for use in a wireless communications network, comprising:
2 communicating data with plural mobile stations over a wireless link; and
3 sending a broadcast message to the plural mobile stations, the broadcast message
4 containing an indication for indicating to the plural mobile stations that the mobile stations are to
5 change data rates for transmissions over a reverse wireless link.

1 2. The method of claim 1, wherein sending the broadcast message comprises
2 sending a grant message on a channel that is monitored by the plural mobile stations.

1 3. The method of claim 2, wherein sending the grant message on the channel
2 comprises sending the grant message on a forward grant channel according to code-division
3 multiple access (CDMA) 2000.

1 4. The method of claim 2, wherein sending the grant message comprises sending a
2 grant message containing an identifier, the identifier settable to a first value to uniquely identify
3 one of the plural mobile stations, and the identifier settable to a predetermined value to provide a
4 broadcast indication for indicating to the plural mobile stations that the mobile stations are to
5 change data rates for transmissions over the reverse wireless link.

1 5. The method of claim 4, wherein the identifier comprises a medium access control
2 (MAC) identifier (MAC ID), the method further comprising:
3 setting the MAC ID of the grant message to the first value to target a first one of
4 the plural mobile stations; and
5 setting the MAC ID of the grant message to the predetermined value to provide
6 the broadcast indication to the plural mobile stations.

1 6. The method of claim 5, wherein setting the MAC ID to the predetermined value
2 comprises setting the MAC ID to a binary value 00000000.

1 7. The method of claim 2, wherein sending the grant message comprises sending a
2 grant message containing a data rate assignment field and an identifier field, wherein the data
3 rate assignment field contains an assigned data rate for a mobile station identified by the
4 identifier field.

1 8. The method of claim 7, wherein the channel is a shared channel monitored by
2 each of the plural mobile stations, the method further comprising setting a value of the identifier
3 to uniquely identify one of the mobile stations such that the one mobile station is able to receive
4 an assigned data rate in the data rate assignment field.

1 9. The method of claim 8, further comprising setting the identifier field to a
2 predetermined value to provide a broadcast indication for indicating to the plural mobile stations
3 that the mobile stations are to change data rates for transmissions over the reverse wireless link.

1 10. The method of claim 1, wherein sending the broadcast message to the plural
2 mobile stations comprises sending the broadcast message to cause the plural mobile stations to
3 set respective data rates to a value less than or equal to an autonomous data rate of the
4 corresponding mobile station.

1 11. The method of claim 10, further comprising a mobile station transmitting data on
2 a reverse wireless link in autonomous mode in response to receiving the broadcast message,
3 wherein transmitting in autonomous mode comprises transmitting the data at a rate that is less
4 than or equal to the autonomous data rate.

1 12. The method of claim 1, wherein sending the broadcast message to the plural
2 mobile stations comprises sending a broadcast message containing an indication for indicating to
3 the plural mobile stations that the mobile stations are to change data rates for transmissions of
4 packet data over respective reverse packet data channels.

1 13. An article comprising at least one storage medium containing instructions that
2 when executed cause a system in a wireless communications network to:

3 communicate data with plural mobile stations over a wireless link; and
4 send a broadcast message to the plural mobile stations, the broadcast message
5 containing an identifier,

6 the identifier set to a first value to uniquely identify one of the plural mobile
7 stations, and the identifier set to a predetermined value to provide a broadcast indication for
8 indicating to the plural mobile stations that the mobile stations are to change data rates for
9 transmissions over a reverse wireless link.

1 14. The article of claim 13, wherein sending the broadcast message comprises
2 sending a layer 2 message.

1 15. The article of claim 14, wherein sending the broadcast message comprises
2 sending a grant message on a forward grant channel (F-GCH) in a code-division multiple access
3 (CDMA) 2000 wireless communications network.

1 16. The article of claim 13, wherein sending the broadcast message comprises
2 sending a grant message containing the identifier that is settable to the first value and
3 predetermined value.

1 17. The article of claim 13, wherein sending the broadcast message containing the
2 broadcast indication is for indicating to the plural mobile stations that the mobile stations are to
3 change data rates for transmissions of packet data over respective reverse channels.

1 18. The article of claim 13, wherein sending the broadcast message containing the
2 broadcast indication is for assigning a data rate to each of the plural mobile stations, the data rate
3 relating to transmissions of packet data over respective reverse channels.

1 19. The article of claim 13, wherein sending the broadcast message containing the
2 broadcast indication is for incrementing or decrementing data rates of the plural mobile stations
3 for transmissions of packet data over respective reverse channels.

1 20. A mobile station comprising:
2 an interface to receive messages from a base station, the messages comprising a
3 broadcast message targeted to plural mobile stations; and
4 a controller to change a data rate of transmission over a reverse wireless link in
5 response to the broadcast message.

1 21. The mobile station of claim 20, wherein the broadcast message indicates that the
2 mobile station is to transmit at a data rate that is less than or equal to an autonomous data rate,
3 wherein the controller is adapted to transmit autonomously over the reverse
4 wireless link without scheduling from the base station, the controller to transmit at a data rate
5 that is less than or equal to the autonomous data rate.

1 22. The mobile station of claim 21, wherein the interface is adapted to receive another
2 message from the base station that sets the autonomous data rate.

1 23. The mobile station of claim 20, wherein the controller is adapted to change the
2 data rate of transmission over a reverse packet data channel.

1 24. The mobile station of claim 23, wherein the reverse packet data channel is a code-
2 division multiple access (CDMA) 2000 reverse packet data channel (R-PDCH).

1 25. The mobile station of claim 20, wherein the interface is adapted to receive the
2 broadcast message on a forward grant channel, the forward grant channel being a shared channel
3 for monitoring by plural mobile stations.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.